

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

KAISER ALUMINUM AND CHEMICAL  
CORPORATION,

Appellant,

v.

State of Washington DEPARTMENT  
OF ECOLOGY,

Respondent.

PCHB No. 89-71

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter concerns Kaiser Aluminum's appeal of Department of Ecology's Order assessing \$500 (DE 89-32) in civil penalties for alleged violation of the ambient air quality gaseous fluoride standards, from its facility near Mead, Washington.

A hearing was held on February 20, 1990 in Spokane. Present for the Pollution Control Hearings Board were: Chair Judith A. Bendor, presiding and Member Harold S. Zimmerman.

Appellant Kaiser was represented by R. C. Jeltsch, the Staff Environmental Engineer. Respondent DOE was represented by Assistant

1 Attorney General Laurie Sillers Halvorson. Dannelle Bungen, a court  
2 reporter affiliated with Gene Barker and Associates, recorded the  
3 proceedings.

4 Testimony was heard and exhibits admitted and examined. Argument  
5 was made. From the foregoing, the Board makes these:

6 FINDINGS OF FACT

7 I

8 Kaiser Aluminum operates a large aluminum plant near the town of  
9 Mead, Washington. The facility converts alumina into aluminum metal  
10 through smelting.

11 II

12 On March 3, 1989, Kaiser Aluminum sent to the Department of  
13 Ecology its January 1989 monthly Air Quality Monitoring Report. The  
14 Report stated that for January 21, 1989 at Station Three regarding the  
15 24-hour gaseous fluoride concentration:

16 \*\*Suspect lab problem on tapes for 1/21, Mead  
17 Station. Reading is 5.4 ug/m<sup>3</sup>. Scrubber  
18 operating logs show no reason for such a high  
19 reading and if this reading were real, a more  
gradual buildup and decay in data for surrounding  
days would be expected.

20 The 24-hour ambient standard for gaseous fluoride is 2.9  
21 ug/m<sup>3</sup>. WAC 173-481-110.

22  
23 DOE issued a Notice of Penalty of \$500, DE 89-32 on April 25,  
24 1988, for this exceedance. Kaiser filed its appeal with this Board on  
25

26 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
27 PCHB No. 89-71

1 May 31, 1989 which became our PCHB No. 89-71.

2 III

3 Kaiser is required to operate ambient air quality monitoring  
4 stations outside its plant's boundaries. The air monitoring at  
5 Station Three has a dual tape sample. Air pumps draw air through  
6 filters onto tapes. The second tape reacts with gaseous fluoride. A  
7 sample is taken every 3 hours and eight consecutive samples are used  
8 for the 24-hour concentration. The tapes are removed monthly and  
9 analyzed. The amount of air that is drawn through the equipment is  
10 calculated. From this information Kaiser calculates the gaseous  
11 fluoride concentration in the ambient air.

12 Kaiser has two sampling machines, but they are not operated at  
13 the same time. Rather, the second machine is used as a backup if the  
14 first machine "goes down."

15 No evidence was presented whatsoever of a machine malfunction, or  
16 an error in the laboratory analysis or calculations.

17 IV

18 The particular ambient air quality standard is one derived to  
19 protect livestock and vegetation. WAC 173-481-010. The incident  
20 occurred in January when damage to vegetation is less likely.

21 Kaiser's previous history regarding ambient gaseous fluoride  
22 levels is exemplary. Department of Ecology views this one exceedance  
23 as an isolated incident.

V

Kaiser's case consisted of its necessarily retrospective review in mid-February to determine the plant's operation on January 21, 1989, to try and determine what part of the operation if any, caused the exceedance.

However, Kaiser did not provide facts during the hearing demonstrating more probable than not that its plant did not cause the exceedance. In particular, we find unconvincing the argument that any 24-hour exceedance is necessarily preceded by a gradual build-up of ambient fluoride levels, and is subsequently followed by a gradual decline. The facts presented do not support such conclusion. Data for emissions that come out the uncontrolled roof stacks is only taken 3 days per month. There was no evidence thus, of readings for such sources for January 21, 1989; Kaiser's evidence on its own plant's operation had this data gap. Therefore, the meteorological modeling which relied in part on roof data, suffered from the data gap. Lastly, Kaiser's staff engineer conceded during testimony that the exceedance is "still unexplained."

Kaiser did not present any evidence that any other facility in the area caused these ambient levels.

VI

Any Conclusion of Law which is deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board enters these:

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 89-71

(4)

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these parties and these issues.  
4 Chapt. 43.21B RCW.

5 II

6 Appellant Kaiser's own monthly air quality monitoring report  
7 provides prima facie evidence that Kaiser caused an exceedance of the  
8 ambient air quality standard. The Department of Ecology relies on  
9 this monitoring data. It is an essential enforcement tool. Kaiser,  
10 therefore, has the burden to prove that they did not cause the  
11 exceedance to occur. Kaiser has not done so. Finding of Fact V,  
12 above.

13 III

14 The maximum fine possible is \$5,000. RCW 70.94.431. The penalty  
15 assessed was only 1/10th the maximum, \$500. We find this penalty to be  
16 reasonable. If Kaiser remains concerned about data reliability, it  
17 can review its internal procedures to determine if additional  
18 safeguards are needed.

19 IV

20 Any Finding of Fact which is deemed to be a Conclusion of Law is  
21 hereby adopted as such.

22 From these Conclusions of Law, the Board enters this:  
23  
24  
25


ORDER

The \$500 penalty No. DE 89-32 is AFFIRMED.

DONE this 7<sup>th</sup> day of March, 1990.

POLLUTION CONTROL HEARINGS BOARD

  
JUDITH A. BENDOR, Presiding

  
HAROLDS S. ZIMMERMAN, Member